

Environmental Protection Authority

Environmental Protection Act 1986

Section 38E

STATEMENT OF REASONS

REQUEST TO DECLARE A PROPOSAL A DERIVED PROPOSAL

Proposal: Casuarina Boat Harbour

Proponent: Department of Transport

Strategic proposal: Koombana Bay Marine Structures

Decision

For the reasons outlined below, the Environmental Protection Authority (EPA) has determined to declare the referred proposal a derived proposal.

Background

On 24 March 2015, the South West Development Commission referred the Koombana Bay Marine Structures (KBMS) to the EPA under s.38 of the *Environmental Protection Act 1986* (EP Act). The proposal was for the identification of future proposals to construct and operate the Casuarina Boat Harbour (CBH), Koombana Bay Sailing Club Marina and the Dolphin Discovery Centre Finger Jetty.

The EPA assessed the proposal as a strategic proposal at the level of Public Environment Review and published its report in March 2024 (Report 1760). The CBH was identified as a future proposal in the EPA report.

On 28 June 2024, the Minister for Environment, after consulting relevant decision-making authorities, issued Ministerial Statement (MS) 1226. The Statement agreed that the future proposals identified in Report 1760 may be implemented subject to the conditions set out in the Statement.

Since the publication of MS 1226, there have been no changes to the proposal or conditions or declaration of other derived proposals.

On 2 July 2024, the Department of Transport referred the CBH proposal to the EPA under s.38 of the EP Act. The proponent requested that the proposal be declared a derived proposal. The elements and extents of the CBH proposal are attached to the EPA's s.38E notice accompanying this Statement of Reasons.

The referral and the request that it be declared a derived proposal were advertised on the EPA Consultation Hub from 2 July 2024 to 8 July 2024. One submitter raised concerns in relation to the potential for ongoing impacts to breeding populations of the

threatened fairy tern. The other raised the potential for the proposal to impact local marine life (including avifauna), coastal environments, water quality, public amenity and tourism from construction activities, the ongoing increased level of activity and potential pollution.

Relevant statutory and administrative provisions

On receipt of a request that a referred proposal be declared a derived proposal, the EPA's consideration of the request is subject to the provisions of s.38E of the EP Act.

After considering the public comments received and the proposal documentation, the EPA then considers whether or not to declare the referred proposal to be a derived proposal.

To do so, s.38E(4) of the EP Act requires that:

- the referred proposal was identified in the strategic proposal; and
- the Ministerial statement published in relation to the strategic proposal agreed that the referred proposal could be implemented, subject to any conditions.

The EPA may refuse to declare the referred proposal to be a derived proposal under s.38E(5) of the EP Act if it considers that:

- the environmental issues raised by the referred proposal were not adequately assessed in the strategic assessment
- there is significant new or additional information that justifies the reassessment of the issues raised by the referred proposal, or
- there has been a significant change in the relevant environmental factors since the strategic assessment was completed.

Sections 38E(4) and (5) provide the requirements for the EPA's consideration of a request to declare a referred proposal to be a derived proposal.

Materials considered in making this decision

In determining whether to declare the referred proposal a derived proposal, the EPA has considered the following:

- strategic assessment Report 1760 and implementation conditions of MS 1226
- the information provided by the proponent
- information obtained from conducting its own inquiries and investigations.

Consideration

1. Was the referred proposal identified in a strategic proposal that was assessed by the EPA?

Yes. This proposal is for the upgrade of the CBH, which was identified as a future proposal in the strategic assessment. The limitations and extent of the future proposals are identified in Part A of MS 1226. The referred proposal is defined in the strategic proposal content document (PCD) (as amended during assessment) as:

Proposal Element	Location	Maximum extent, capacity or range
Physical elements		
Development envelope	Figure 1	Up to 40 ha
CBH disturbance footprint	Figure 1	Up to 32 ha within CBH disturbance footprint
Breakwater	Figure 1	Up to 3.5 ha within the CBH disturbance footprint (Figure 1).
Reclamation	Figure 1	Up to 3.5 ha within CBH disturbance footprint
Marine Infrastructure	Within CBH	Floating jetties, boat ramps and boat pens within CBH disturbance footprint (Figure 1).

The physical elements of the referred proposal are defined in Table 2 of the proponent's PCD as consisting of the following:

Proposal element	Location/description	Maximum extent, capacity or range
Physical elements		
CBH disturbance footprint and development envelope	Figure 1 (attached to the PCD)	Total disturbance footprint of up to 32 ha within the 40 ha CBH development envelope.
Breakwater and reclamation (using imported rock and clean fill)		Up to 3.5 ha within the CBH disturbance footprint.
Marine Infrastructure		Floating jetties, boat ramps and boat pens within CBH disturbance footprint.

Therefore, the referred proposal is considered to be consistent with a future proposal identified in the strategic proposal assessed by the EPA.

2. Was an agreement reached or a decision made that the referred proposal could be implemented or could be implemented subject to conditions and procedures?

Yes. The Minister for Environment issued MS 1226 on 28 June 2024. The statement agreed that the future derived proposals listed in Tables 1, 2 and 3 in Part A and which were identified in the strategic proposal to which Report 1760 relates may be implemented subject to the conditions set out in the statement. The referred proposal is listed in Table 1 in Part A of MS 1226.

3. Does the referred proposal raise environmental issues that were not adequately assessed when the strategic proposal was assessed?

No. In assessing the strategic proposal, the EPA considered Marine Environmental Quality, Marine Fauna, Benthic Communities and Habitats and Coastal Processes were the key environmental factors. The EPA completed its assessment of the strategic proposal in March 2024. The request to consider CBH a derived proposal was received in July 2024. The environmental factors identified during the assessment of the strategic proposal remain the relevant environmental factors for the referred proposal. The assessment of the environmental factors in Report 1760 was both rigorous and comprehensive. The referred proposal does not raise environmental issues that were not adequately assessed when the strategic proposal was assessed.

4. Is there significant new or additional information that justifies reassessment of the issues raised by the referred proposal?

No significant new or additional information that would justify reassessment of the issues was provided with the referred proposal. The EPA's assessment (Report 1760 published in March 2024) of the KBMS strategic proposal remains relevant to the referred proposal as described in the referral information. The relevant conditions set out in MS 1226 are appropriate and relevant to manage the referred proposal.

The management plans required for the referred proposal by MS 1226 were provided with the referral, were reviewed and finalised during the KBMS strategic proposal assessment, and remain unchanged.

The request that the proposal be declared a derived proposal was advertised on the EPA's Consultation Hub from 2 July 2024 – 8 July 2024. Two public comments were received. The proponent has provided reasonable responses to the matters raised in the public comments. No new or additional matters were raised in the public comments that would justify reassessment. In relation to fairy terns that was raised in one public comment, Report 1760 had particular regard for the potential impacts to the breeding success of the species. MS 1226 includes condition B4-3(1) which requires that there be no displacement of actively nesting Australian fairy terns from within the CBH development envelope. Condition B4-3 is included as a recommended implementation condition for the derived proposal.

5. Has there been a significant change in the relevant environmental factors since the strategic proposal was assessed?

No. There has not been a significant change in relevant environmental factors since the strategic proposal was assessed.